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SENATE

REPORT
No. 574

VALIDATING CERTAIN OIL LEASE ASSIGNMENTS

JULY 23, 1959.—Ordered to be printed

Mr. ALLOTT, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany S. 2308]

The Committee on Interior and Insular Affairs, to whom was referred the bill (S. 2308) to validate certain extended oil and gas leases, having considered the same, report favorably thereon with amendments and recommend that the bill, as amended, do pass.

The reported measure comprises the text of S. 2308 as introduced by Senator Allott plus the text of the bill, S. 1272, sponsored by Senator Anderson, to provide for the extension of certain oil and gas leases, as section 2. Section 3 was added upon the recommendation of the Department of the Interior.

Committee action was unanimous, and none of the executive agencies concerned has any objection to the amended measure. Public hearings were held on both S. 1272 and S. 2308, and all points of view were given full consideration by the committee.

EXPLANATION OF THE BILL

Section 1 of the amended bill would validate all parts of oil and gas leases extended by the Secretary of the Interior by reason of a partial assignment of lease filed for approval with the Secretary of the Interior on or before August 29, 1958.

Section 2 of the amended bill is Senator Anderson's S. 1272. It would provide that a holder of an oil and gas lease whose lease expired on September 30, 1958, and who made a partial assignment during the last month of the lease term, shall be entitled to a 2-year extension, and the assignee of the leaseholder shall be entitled to a 2-year extension of the lease on the assigned lands. Such 2-year extensions for both the assigned and retained portions of a lease are in accordance with existing law. (See 30 U.S.C. 187a.)

Section 3 of the bill as amended would permit the Secretary of the Interior to contest leases, or bring cancellation proceedings, where

there is a question as to the validity of a lease or the qualifications of a person to hold an interest in the lease.

NEED FOR LEGISLATION

This proposed legislation affords relief in a limited sense to a limited number of oil and gas operators on the public domain; it does not amend or change the Mineral Leasing Act of February 25, 1920 (41 Stat. 437), as amended. The bill will assist certain persons whose rights in Federal oil and gas leases are jeopardized, or in some cases abrogated, by reason of an abrupt change in administrative interpretation of existing law. Such persons will be irreparably damaged unless this bill becomes law.

The need for this legislation came about as a result of the Solicitor's opinion of June 4, 1957, and two subsequent opinions in the Franco Western Oil Company case; specifically, those of August 11, 1958, and August 29, 1958.

With regard to the extension of leases by assignment under paragraph (6) of the act of July 29, 1954 (68 Stat. 585; 30 U.S.C. 187a), which amended section 30(a) of the Mineral Leasing Act, the question was raised as to whether a partial assignment filed and approved on the last day of the extended 5-year term of a noncompetitive lease would extend the segregated portions, both assigned and retained, of the lease for 2 years. The language in section 30(a) provides that—

> Notwithstanding anything to the contrary in section 30 hereof, any oil or gas lease issued under authority of this Act may be assigned or subleased, as to all or part of the acreage included therein, subject to final approval by the Secretary and as to either a divided or undivided interest therein, to any person or persons qualified to own a lease under this Act, and any assignment or sublease *shall take effect as of the first day of the lease month following the date of filing in the proper land office* * * *. [Emphasis added.]

The issue presented the Solicitor was whether a partial assignment of an undeveloped, noncompetitive oil and gas lease filed and approved on the last day of the extended 5-year term of a noncompetitive lease would extend the segregated portions of the lease for 2 years.

The memorandum opinion of the Solicitor dated June 4, 1957, stated in part that—

> It is my opinion that such an approved assignment would effectively extend the term of the segregated portions of the lease for the reason that the last moment of the last day of the lease term would be instantaneous with the first moment of the effective date of the assignment.

A reversal of this position, which had established the law and procedure, came about in the following manner:

L. N. Hagood, owner of an oil and gas lease in its extended 5-year term, filed an assignment of a portion of the lease on June 17, 1957, to Savoy Petroleum Corp. The lease expired June 30, 1957. The Director of the Bureau of Land Management, relying on the opinion of June 4, 1957, approved the assignment and held that the assignment effectively extended both the base lease and the assigned portion for 2 years. An application by Franco Western Oil Co. filed for the

Hagood lease on the expiration date of the extended base lease was rejected by the Director of the Bureau of Land Management in accordance with the 1957 ruling.

Franco Western Oil Co. appealed the ruling rejecting its application on the basis that section 30a of the Mineral Leasing Act provides that assignments may be made "subject to final approval by the Secretary" and that an assignment shall take effect as of the "first day of the lease month following date of filing of the assignment." As previously stated, the lease in question expired June 30, 1957. In the Solicitor's decision of August 11, 1958, it was held that since under the facts of this particular case there was no first day of a lease month after the date of filing of the assignment, the original lease and assignment could not have been considered as having been extended by the assignment of portion of the lease. Therefore, those leases that had been extended for 2 years on the basis of assignments filed in the 12th month of the 10th year of a lease were not properly extended. The case was dismissed and remanded to the Bureau of Land Management for appropriate action on the application of Franco Western Oil Co.

On August 29, 1958, the Solicitor issued a supplemental opinion which validated all extensions made under the original decision of June 4, 1957, and ruled that the lease under question in the Franco Western Oil Co. case has been properly extended. The Department reasoning was to the effect that it should give future effect only to its ruling of August 11, 1958.

It was pointed out in the testimony before the committee that literally hundreds of titles have been clouded by reason of the foregoing rulings. Testimony also highlighted the fact that almost a full year has elapsed since the second Franco Western decision of August 29, 1958, and that most oil and gas attorneys agree that even if Interior's actions are sustained on appeal in the courts, all of the benefits of the extensions granted by the Department will have been lost, in fact.

Section 1 of this bill would remove the cloud from the title of those leases in time for the lessees to reap some of the benefits due them by the extension of their leases. The need is therefore urgent.

Section 2 of the bill would provide relief for those persons who, after August 29, 1958, and before September 30, 1958, assigned leases or received assignments of leases expiring September 30, 1958, and who, after having such assignments rejected by the Bureau of Land Management, exercised their right of appeal.

The Solicitor's opinions of August 11, 1958, and of August 29, 1958, were not published in the Federal Register. There is no requirement for such publication, in the Register or elsewhere. Testimony before the committee established the fact that the owners of leases had no normal way of knowing of these opinions so that they could have been put on timely notice that an assignment made during the last month of a lease would not be approved, as had been the rule prior to Franco Western I. Therefore, leaseholders who followed established procedures and filed partial assignments in the 12th month of the 10th year of their leases were denied the 2-year extensions as provided by the Department's opinion of June 4, 1957, interpreting the 1954 amendment to the Mineral Leasing Act. Testimony before the committee reveals that while, in most cases, appeals have been taken from the action of the Department in denying these extensions, legis-

lation is necessary to correct the situation and allow the lessees who appealed to receive the benefits they are entitled to.

Had the Department circularized and publicized its reversal of its established interpretation of the law, there might be some reason to question the need for this legislation. At the committee hearing, Department officials agreed that these opinions and rulings probably had not been publicized sufficiently widely to give lessees timely notice, although they were handled in the customary manner. The lessees acted in good faith and in accord with then established practices and procedures. Since only a year remains in the assignments affected, relief is urgent.

Section 3 of the bill was included at the request of the Department of the Interior to make certain that the Department will not be foreclosed from bringing contests or cancellation proceedings where there is reason to believe the holder of a lease, or an assignee of a lease, may be in violation of law or ineligible to hold a lease.

REPORTS OF EXECUTIVE AGENCIES

The reports of the Department of the Interior and the Bureau of the Budget on both S. 2308 and S. 1272 are set forth below:

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., July 13, 1959.

Hon. JAMES E. MURRAY,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate, Washington, D.C.

DEAR SENATOR MURRAY: This is in reply to your request for the views of this Department on S. 2308, a bill to validate certain extended oil and gas leases.

We would not object to the enactment of S. 2308.

This bill would declare that all parts of any oil and gas lease issued under the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 180 et seq.), for which an extension has been granted by the Secretary of the Interior by reason of a partial assignment of that lease filed for approval with him on or before August 29, 1958, are validly extended. The bill also provides that nothing in its terms would prohibit the Secretary of the Interior from contesting the initial validity of a lease or qualifications of any person to hold an interest in that lease.

Section 30(a) of the Leasing Act was amended by the act of July 29, 1954 (68 Stat. 583, 585; 30 U.S.C., sec. 187a), to provide that:

"Assignments under this section may also be made of parts of leases which are in their extended term because of any provision of this act. The segregated lease of any undeveloped lands shall continue in full force and effect for 2 years and so long thereafter as oil or gas is produced in paying quantities."

This provision has required considerable interpretation by the Solicitor of this Department.

In an opinion of June 4, 1957 (M–36443), it was held that the partial assignment of an undeveloped noncompetitive oil and gas lease which was filed and approved on the last day of the extended 5-year term of that lease would extend the segregated lease for a further 2 years. On August 11, 1958, however, in the case of *Franco*

Western Oil Company (65 I.D. 316) the Solicitor reversed the earlier ruling, holding that a partial assignment during the last month of the lease term would not be approved under section 30(a). The reasoning behind this second decision was that the approval of the assignment would not be effective until the first day of the month following the expiration of the lease, and that, consequently, the lease would lapse before the assignment became effective.

A later opinion on September 30, 1958, supplemented this ruling (65 I.D. 427). It held valid partial assignments made and filed for approval prior to the decision of August 11, 1958, and, in addition, held valid partial assignments made and filed for approval in the last month of the extended term of leases which were to expire on August 31, 1958. The reasoning behind this supplemental opinion was that parties had been justified in relying upon the original opinion, and that the Franco Western decision should be given no retroactive effect. It was stated in the opinion that it "has not been the practice of the Department to give its decision retroactive effect so as to disturb actions taken in other cases on an overruled interpretation of the law" (65 I.D. 428).

S. 2308 would, in effect, merely be legislative confirmation of the Department's opinion of September 30, 1958. Although we do not see that this legislation in necessary, we would not object to this method of removing any doubt that may exist as to the validity of leases extended on the basis of the Department's decisions of June 4, 1957, and of September 30, 1958.

The Bureau of the Budget has advised that there is no objection to the submission of this report to your committee.

Sincerely yours,

ROGER ERNST,
Assistant Secretary of the Interior.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., July 13, 1959.

Hon. JAMES E. MURRAY,
Chairman, Committee on Interior and Insular Affairs,
New Senate Office Building, Washington, D.C.

MY DEAR MR. CHAIRMAN: This is in response to your request for the views of the Bureau of the Budget with respect to S. 2308, a bill to validate certain extended oil and gas leases.

The report which the Secretary of the Interior is submitting on this bill indicates that it would be merely legislative confirmation of a departmental opinion, and interposes no objection to this method of removing any doubt as to the validity of certain leases.

This Bureau concurs and, accordingly, would have no objection to the enactment of S. 2308.

Sincerely yours,

PHILLIP S. HUGHES,
Assistant Director for Legislative Reference.

DEPARTMENT OF THE INTERIOR,
OFFICE OF THE SECRETARY,
Washington, D.C., July 10, 1959.

Hon. JAMES E. MURRAY,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate, Washington, D.C.

DEAR SENATOR MURRAY: This is in reply to your request for the views of this Department on S. 1272, a bill to provide for the extension of certain oil and gas leases.

We would not object to enactment of this bill.

If S. 1272 were enacted, any party who held a lease issued under the Mineral Leasing Act of February 25, 1920, as amended (30 U.S.C. 181 et seq.), or the Mineral Leasing Act for Acquired Lands (30 U.S.C., sec. 351–359), which expired on September 30, 1958, and who had made a partial assignment of his lease during the last month of the lease term would be entitled to an extension of that lease under the provisions of section 30(a) of the Leasing Act (30 U.S.C., sec. 187a) with respect to the retained portion of the base lease segregated by that partial assignment. Similarly the assignee of that leaseholder would be entitled to an extension with respect to the portion of the lease assigned to him.

Section 30(a) of the Leasing Act was amended by the act of July 29, 1954 (68 Stat. 585), to provide that:

"Assignments under this section may also be made of parts of leases which are in their extended term because of any provision of said sections. The segregated lease of any undeveloped lands shall continue in full force and effect for 2 years and so long thereafter as oil or gas is produced in paying quantities."

This provision has required considerable interpretation by the Solicitor of this Department.

In an opinion of June 4, 1957 (M–36443), it was held that the partial assignment of an undeveloped noncompetative oil and gas lease which was filed and approved on the last day of the extended 5-year term of that lease would extend the segregated lease for a further 2 years. On August 11, 1958, however, in the case of *Franco Western Oil Company* (65 I.D. 316) the Solicitor reversed the earlier ruling, holding that a partial assignment during the last month of the lease term would not be approved under section 30(a). The reasoning behind this second decision was that the approval of the assignment would not be effective until the first day of the month following the expiration of the lease, and that, consequently, the lease would lapse before the assignment became effective. A later opinion on September 30, 1958, supplemented this ruling (65 I.D. 427), and held valid all partial assignments made and filed for approval in the last month of the extended term of leases which were to expire on August 31, 1958.

We realize that many prospective assignors and assignees may have relied upon the 1957 opinion. Our later decision of August 11, 1958, may not have come to their attention immediately. We are not in a position to give administrative relief on the grounds of this lack of knowledge of the changed holding, but we would not object if the Congress should deem it desirable to validate these subsequent assignments. However, we are not certain that this bill would accomplish its desired objective, since new leases have probably been issued covering many of the lands embraced in the assignments which would be

validated by S. 1272. Where land has been leased to another party since the assignment was held invalid, the provisions of S. 1272 would not apply.

The Bureau of the Budget has advised that there is no objection to the submission of this report to your committee.

Sincerely yours.

ROGER ERNST,
Assistant Secretary of the Interior.

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D.C., June 30, 1959.

Hon. JAMES E. MURRAY,
Chairman, Committee on Interior and Insular Affairs,
New Senate Office Building, Washington, D.C.

MY DEAR MR. CHAIRMAN: This is in response to your request for the views of the Bureau of the Budget with respect to S. 1272, a bill to provide for the extension of certain oil and gas leases.

The Secretary of the Interior, in his report to your committee on this bill, interposes no objection to its enactment in view of the possible need for relief arising out of the beneficiaries' reliance upon a Solicitor's opinion which was subsequently reversed. This Bureau concurs.

Accordingly, there would be no objection to the enactment of S. 1272.

Sincerely yours,

PHILLIP S. HUGHES,
Assistant Director for Legislative Reference.

APPENDIX

The text of the two *Franco Western* opinions by the Solicitor's Office in the Department of the Interior is set forth below. It was these opinions, reversing the then interpretation of the law, that gave rise to the situation which S. 2308, as amended by the addition of Senator Anderson's bill S. 1272, seeks to remedy.

FRANCO WESTERN I

FRANCO WESTERN OIL COMPANY ET AL.

[65 I.D. 316]

A–27607 *Decided August 11, 1958*

Rules of Practice: Appeals: Statement of Grounds

Where an appellant states merely that there has been an erroneous interpretation of the law and regulations, without specifying in what manner either the law or the regulations may have been erroneously construed, the appellant has failed to state reasons for his appeal, as required by the rules of practice, and the appeal will be dismissed.

Oil and Gas Leases: Assignments or Transfers

Regardless of when approval is given to an assignment of a portion of an oil and gas lease, the assignment, when approved, is effective from the first day of the lease month following the date of its filing in the proper land office.

Oil and Gas Leases: Assignments or Transfers—Oil and Gas Leases: Extensions

For leases to become segregated through assignment, and thus entitled to the extension authorized for segregated leases, an assignment must be filed when there is at least one lease months remaining in the term of the lease. A partial assignment filed during the last month of the lease term cannot become effective to segregate the lease and to entitle the segregated portions to any extension.

Humble Oil & Refining Company, 64 I.D. 5 (1957), distinguished.
Associate Solicitor's Opinion M–36443 (June 4, 1957), overruled in part.

APPEAL FROM THE BUREAU OF LAND MANAGEMENT

These are three separate appeals to the Secretary of the Interior by Franco Western Oil Company, Duncan Miller, and Raymond J. Hansen from a decision of the Director, Bureau of Land Management, dated November 27, 1957, in which the Director affirmed the rejection by the manager of the Los Angeles land office, on August 22, 1957, of the appellants' offers, simultaneously filed on July 1, 1957, for oil and gas leases on the SE¼ sec. 3, T. 11 N., R. 24 W., S.B.M., California, under the provisions of section 17 of the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., Supp. V, sec. 226), on the ground that the land was embraced in an outstanding oil and gas lease at the time the offers were filed.

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A 5-year noncompetitive oil and gas lease, Los Angeles 087429, was issued to L. N. Hagood for the SE¼ sec. 3 as of July 1, 1947, and the lease was extended for 5 years, through June 30, 1957, under the provisions of section 17 of the Mineral Leasing Act, as amended. On June 17, 1957, an assignment of the lease, insofar as it covered the NE¼SE¼ sec. 3, by Mr. Hagood to the Savoy Petroleum Corporation was filed with the Los Angeles land office. The assignment was approved on June 28, 1957, the assigned portion being designated Los Angeles 087429–A. In approving the assignment, the acting manager held that the lease was extended for 2 years from July 1, 1957.

The Director, relying particularly on an opinion (M–36443) dated June 4, 1957 (unreported), from the Associate Solicitor, Division of Public Lands, to the Chief, Conservation Division, Geological Survey, held that the partial assignment from Hagood to the Savoy Petroleum Corporation effectively served to extend the base lease as well as the assigned portion thereof for a period of 2 years and so long thereafter as oil or gas is produced in paying quantities and that therefore the appellants' lease offers, filed on July 1, 1957, when the land applied for was embraced in a valid existing lease, were properly rejected.

Two of the appellants, Franco Western Oil Company and Raymond J. Hansen, contend that the Hagood lease expired on June 30, 1957, before the assignment of a portion thereof could have taken effect; that the ineffective assignment could not have extended the lease; and that, therefore, the land was open to filing on July 1, 1957, when their offers Los Angeles 015730 and 015740 were filed.

The third appellant, Duncan Miller, in his "Notice of Appeal and Statement of Reasons for Appeal," states merely that "Appellant contends that there has been an erroneous interpretation of the law and regulations" without specifying in what manner either the law or the regulations may have been erroneously construed.

The Department has recently had occasion to consider a statement similar to the above submitted in connection with an appeal to the Secretary by Mr. Miller in another case. There it was held that such a statement, which does not point out wherein the decision appealed from is believed to be erroneous, does not comply with the rules of practice (43 CFR, 1954 Rev., Part 221 (Supp.)), and that the appellant, having failed to state reasons for his appeal, must suffer the dismissal thereof. *Duncan Miller*, 65 I.D. 290 (1958). Accordingly, Mr. Miller's appeal will be dismissed.

We turn now to the question whether the assignment extended the Hagood lease.

Section 30(a) of the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., Supp. V, sec. 187a), under which the assignment of a portion of the Hagood lease was made, provides in pertinent part:

> * * * any oil or gas lease * * * may be assigned or subleased, as to all or part of the acreage included therein, subject to final approval by the Secretary * * * and any assignment or sublease shall take effect as of the first day of the lease month following the date of filing in the proper land office of three original executed counterparts thereof, * * *. Until such approval, however, the assignor or sublessor and his surety shall continue to be responsible for the performance of any and all obligations as if no assignment or sublease had been executed. * * * Upon approval of any assignment or sublease, the assignee or sublessee shall be bound by the terms of the lease to the same extent as if such assignee or sublessee were the original lessee * * *. Any partial assignment of any lease shall segregate the assigned and retained portions thereof, and as above provided, release and discharge the assignor from all obligations

thereafter accruing with respect to the assigned lands; and such segregated leases shall continue in full force and effect for the primary term of the original lease, but for not less than two years after the date of discovery of oil or gas in paying quantities upon any other segregated portion of the lands originally subject to such lease. Assignments under this section may also be made of parts of leases which are in their extended term because of any provision of this Act. The segregated lease of any undeveloped lands shall continue in full force and effect for two years and so long thereafter as oil or gas is produced in paying quantities.

The section permits the assignment of portions of oil and gas leases which are in their 5-year extended term by virtue of section 17 of the Act. It provides that the segregated leases of undeveloped lands resulting from such assignments shall continue in full force and effect for 2 years and so long thereafter as oil or gas is produced in paying quantities.

This latter provision, however, does not mean that the assignment of a part of such a lease automatically results in the term of the base lease, absent production, being extended for 2 years beyond what would, in the absence of the assignment, be the expiration date of that lease. It means, rather, that if the base lease has less than 2 years to run the normal expiration date will be extended for such period of time as will assure the holders of the segregated leases a full 2-year period within which to obtain production. Thus, if such a lease were to be assigned in part during, say, the sixth year of the lease, the terms of the segregated leases resulting from the assignment would not be extended under this provision because the base lease from which the assignment was made would, at the time of the segregation, have more than 2 full years to run. On the other hand, if such a lease were, by assignment, to be segregated in, say, the third month of the tenth year, the segregated leases would run, absent production, for 2 years from the segregation. This would result in the base lease receiving an extension of 1 year and 3 months beyond the date on which it would otherwise have terminated, absent production. Solicitor's opinions M–36278, 62 I.D. 216 (1955); M–36398, 64 I.D. 135 (1956); and M–36464, 64 I.D. 309 (1957).

The section imposes no limit on when assignments may be made. The question remains, however, whether an assignment of part of the acreage included in a lease of undeveloped lands filed in the last month of the extended term of the lease operates to segregate and extend that lease for an additional 2 years.

Section 30(a) provides that assignments may be made "subject to final approval by the Secretary" and that an assignment "shall take effect as of the first day of the lease month following the date of filing of the assignment" in the proper land office. While the assignor remains liable for all obligations under the lease until approval of the assignment and the assignee cannot be held liable under the lease until approval is given, nevertheless the assignment, if it is approved, takes effect on a day certain. The approval of the assignment may be given during the month in which the assignment is filed, as was done in the present case, or the approval may be delayed for months as happens in many cases due to various circumstances. However, regardless of when the approval is given, the assignment, when approved, is effective from the first day of the lease month following the date of filing thereof. The Secretary (or his delegate) cannot, by approving an assignment in the month in which it is filed, change the effective date of the assignment. The first day of the lease month

following the filing of an assignment is the earliest date upon which the assignment can take effect. *Albert C. Massa et al.*, 62 I.D. 339 (1955).

While the section provides that any partial assignment of any lease shall segregate the assigned and retained portions thereof, that provision must be read with the other language therein to mean, not that the assignment itself shall segregate the lands held under lease, but that the assigned and retained portions of the base lease shall become separate leases on the effective date of the assignment, provided the assignment is ultimately approved.

For the leases to become segregated, and thus be entitled to the extension provided for in the last sentence of the section, an assignment must have been filed while there is at least one full "lease month" remaining in the term of the lease. Otherwise there is no "first day of the lease month following the date of filing" upon which the assignment can take effect. Thus where the expiration date of a lease covering undeveloped lands is the last day of the month in which an assignment of a portion thereof is filed, there is no "first day of the lease month following the date of filing" upon which the assignment can take effect. In such a situation the lease will have terminated before the assignment can become effective and thus the assigned and retained portions of the base lease never ripen into segregated leases.

While the Department held, in *Humble Oil & Refining Company*, 64 I.D. 5 (1957), that a relinquishment of an oil and gas lease, "effective as of the date of its filing" under section 30(b) of the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., Supp. V, sec. 187b), was effective from the first instant of the day upon which it was filed and terminated the lease as of the first moment of that day, that decision is no authority for the proposition that an assignment which, under section 30(a) of the act, cannot become effective during the term of the lease will extend the lease because "the last moment of the last day of the lease term would be instantaneous with the first moment of the effective date of the assignment."

The *Humble* case was concerned with events which took place on the same *day*. That case called for the application of the rule that in computing time a day is to be considered as an indivisible unit or period of time, which has its beginning coincident with the first moment of the day (86 *C.J.S.*, Time § 16), and it was held that a relinquishment filed on the day the annual rental under an oil and gas lease became due had the effect of terminating the lease *eo instanti* as of the first moment of that day and that, therefore, no advance rental accrued as of that day.

The rule for computing time also requires that every day and every part of that day be considered, in contemplation of law, to be one day before the first moment of the next day, although the elapsed time is infinitesimal, and that if an act is to be performed after a certain day it cannot be performed until the whole of that day has elapsed. 86 *C.J.S.*, Time § 16.

Under this rule, the Hagood lease cannot be considered to have been extended by the assignment. The opinion of the Associate Solicitor of June 4, 1957, *supra*, insofar as that opinion stated that a partial assignment of a noncompetitive oil and gas lease filed and approved on the last day of the extended 5-year term of the lease would effec-

tively extend the terms of the segregated portions of the lease, must therefore be and is overruled.

It is held that the Hagood lease terminated on June 30, 1957; that the assignment of a portion thereof to the Savoy Petroleum Corporation never took effect; and that the offers of Franco Western Oil Company and Raymond J. Hansen should not have been rejected on the ground that the SE¼ sec. 3, T. 11 N., R. 24 W., S. B. M., California, was, on July 1, 1957, embraced in an outstanding oil and gas lease.

Accordingly, pursuant to the authority delegated to the Solicitor by the Secretary of the Interior (sec. 23, Order No. 2509, as revised; 17 F.R. 6794), the appeal of Duncan Miller is dismissed and the case is remanded to the Bureau of Land Management for appropriate action on the offers of Franco Western Oil Company and Raymond J. Hansen.

EDMUND T. FRITZ,
Deputy Solicitor.

FRANCO WESTERN II

[65 T. D. 427]

FRANCO WESTERN OIL COMPANY ET AL.

A–27607 (Supp.) *Decided September 30, 1958*

Administrative Practice—Oil and Gas Leases: Extensions—Statutory Construction: Administrative Construction

Where the Department places a different interpretation on an act of Congress from that previously adopted, its decision announcing the new interpretation of the statute is to be given prospective application only and actions previously taken in extending oil and gas leases under the overruled interpretation of the statute will not be disturbed.

In a memorandum dated September 23, 1958, the Acting Director, Bureau of Land Management, requested clarification of the departmental decision of August 11, 1958, on the appeal of *Franco Western Oil Company et al.*, 65 I.D. 316, insofar as that decision may affect noncompetitive oil and gas leases extended under an interpretation of section 30(a) of the Mineral Leasing Act, as amended by the act of July 29, 1954, (30 U.S.C., 1952 ed., Supp. V, section 187a), which interpretation was overruled in the decision of August 11, 1958.

The previous interpretation of the statutory amendment was contained in an opinion (M–36443) dated June 4, 1957 [unreported] of the Associate Solicitor, Division of Public Lands, and was to the effect that partial assignments of noncompetitive oil and gas leases, issued and extended under section 17 of the Mineral Leasing Act, as amended (30 U.S.C., 1952 ed., Supp. V, sec. 226) filed and approved on the last day of the extended 5-year term would effectively extend the terms of the segregated leases of undeveloped lands for 2 years and so long thereafter as oil or gas is produced in paying quantities.

The Acting Director states that leases were extended in the interim between the opinion of the Associate Solicitor of June 4, 1957, and the decision of August 11, 1958, on the basis of the Associate Solicitor's interpretation of the amendment, in cases where partial assignments were filed during the last month of the extended terms of such

leases. He states that he has had many inquiries from holders of such leases and others as to the status of those leases in view of the holding in the *Franco Western* case that a partial assignment of an oil and gas lease in its extended 5-year term under section 17 of the Mineral Leasing Act, as amended, filed during the last month of the extended term cannot become effective to segregate the assigned and retained portions of the base lease and thus entitle either the assignor or the assignee to separate leases and to the further 2-year extension afforded by the 1954 amendment of section 30(a) of the Mineral Leasing Act.

It has not been the practice of the Department to give its decisions retroactive effect so as to disturb actions taken in other cases on an overruled interpretation of the law. Nor is there anything in the decision of August 11, 1958, which indicated that other leases which, prior to that date, had been extended under the theory that leaseholders could file partial assignments of their extended leases during the 12th month of the 10th year of their leases and thus be entitled, if the assignments were approved, to the 2-year extension afforded by the 1954 amendment, would be subject to attack by the Department.

The decision of August 11, 1958, represents what the Department now believes to be the correct interpretation of the law. This was the first occasion in which the Department was called upon to reexamine the Associate Solicitor's opinion in an actual case arising under the 1954 amendment and brought to the attention of the Department by way of appeal. That, upon re-examination, it took a different view of the law from that expressed in the opinion does not require that leases extended under the interpretation expressed in the opinion be disturbed.

The Department has, in the past, overruled its former holdings without in any way nullifying actions taken under its previous decisions.[1] In fact, the rule applied by the Department on those occasions when it has specifically considered the question as to whether, because of a change in the interpretation of a statute, its holding should have retroactive effect, has been to deny such effect to its decisions.

Thus, in considering the question whether the Department could construct ditches and canals across lands which, in 1890, were in a tribal status but which were thereafter allotted in severalty to individual Flathead Indians, the Solicitor, in an opinion approved by the Secretary, 58 I.D. 319 (1943), recognizing that for more than 50 years the Department had construed the act of August 30, 1890 (43 U.S.C., 1952 ed., sec. 945), as authorizing it to reserve rights-of-way for ditches and canals across such individually allotted lands, adopted a different view of the application of the act to those lands and urged abandonment of the practice theretofore followed of taking Indian lands for rights-of-way without paying compensation therefor. In the course of his opinion, the Solicitor said:

> This, however, does not imply that actions taken in past years upon the basis of an abandoned theory are now to be considered redressible wrongs. At no time was the past administrative interpretation of this statute so unreasonable

[1] See *Timothy Sullivan, Guardian of Juanita Elsenpeter*, 46 L.D. 110 (1917), overruling *Heirs of Susan A. Davis*, 40 L.D. 573 (1912); *Bertha M. Birkland*, 45 L.D. 104 (1916); and *Lillie E. Stirling*, 39 L.D. 346 (1910). See *Instructions*, 35 L.D. 549 (1907).

that a court could be induced to give relief against its consequences.[2] All that this opinion implies is that there is a realm of administrative discretion within which courts will not interfere, and within which administrative authorities may modify views which turn out to be unwise without thereby raising a host of *ex post facto* claims against the Government.

The fiction that interpretation of laws reveals their eternal meaning has long stood in the way of any such distinction between the prospective and the retrospective application of decisions. But in recent years a more realistic view of the matter has achieved respectability. The Supreme Court has made it clear that nothing in the Federal Constitution or in the nature of the legal process prevents a tribunal from recognizing changing circumstances and laying down a rule for the future different from the rule which it has sustained for the past. Thus the Supreme Court has upheld the validity of a State court decision which lays down for the future a rule different from that applied in the past.[3] The Supreme Court itself has, on occasion, laid down a new rule of law for the future while recognizing the propriety of a different rule in the past.[4] The Supreme Court has likewise recognized the propriety of an administrative decision which lays down a new rule for the future without detracting from the validity of a different rule applied in the past.[5]

The same principle was applied when the Department had for consideration the question of the proper interpretation to be placed on section 1 of the act of July 29, 1942 (56 Stat. 726), as amended by the acts of December 22, 1943 (57 Stat. 608), and September 27, 1944 (58 Stat. 755), granting preference rights to new leases under the Mineral Leasing Act to oil and gas lessees where the lands were not, on the expiration date of the leases, on the known geologic structure of a producing oil or gas field and extending those leases for which no preference right to a new lease was granted

There (58 I. D. 766 (1944)) the Department adopted the view that the legislation granted a preference right to a new lease only with respect to that portion of the lands outside a known producing structure on the date of the expiration of the lease and that only with respect to that part of the lands within a known producing structure on the date of the expiration of the lease was the lease automatically extended. Recognizing that many lessees had construed the provisions as automatically extending their entire leaseholds, despite the fact that part of the lands covered by their leases were outside the known geologic structure of a producing field on the expiration date of their leases, and accordingly had neglected to file applications for preference-right leases, the Department held that its interpretation of the law should be given prospective application only and should not be applied to a lease which, under the construction of the legislation there adopted, had already expired. It held that such a lease should be treated as if extended in its entirety.

Thereafter, an applicant for a noncompetitive oil and gas lease on land not within a producing structure covered by such an extended lease appealed from the rejection of her application, contending that merely because the Department did not so construe the legislation until December 6, 1944, the Department could not give its interpretation prospective effect only and that the legislation had the meaning ascribed to it in 1944 from the time of its enactment and not from the time the Department so construed it. In *Anna R. Pahl*, A–24350

[2] *Cf.* opinion of Supreme Court in *Sioux Tribe* v. *United States*, 316 U.S. 317 (1942) * * *.
[3] *Great Northern Railway* v. *Sunburst Co.*, 287 U.S. 358 (1932).
[4] *Montgomery Ward & Co.* v. *Duncan*, 311 U.S. 243 (1940); *Reconstruction Finance Corp.* v. *Prudence Securities Advisory Group*, 311 U.S. 579 (1941).
[5] *American Chicle Co.* v. *United States*, 316 U.S. 450 (1942). * * *.

(April 4, 1947), the Department held that it was proper to give future effect only to its ruling. The position of the Department was upheld in 1951, by the United States District Court for the District of Columbia in *Anna R. Pahl* v. *Marion Clawson, Director of the Bureau of Land Management, and Oscar L. Chapman, Secretary of the Interior*, Civil No. 3309–48, unreported.

Applying the above rule to those leases which were, prior to August 11, 1958, extended for a further 2-year period and so long thereafter as oil or gas is produced in paying quantities on the basis of assignments filed during the 12th month of the 10th year of the leases, those leases, all else being regular, will be considered as having been properly so extended.

The decision of August 11, 1958, has the effect of shortening by one month the time in which partial assignments of leases already in their extended term can be filed in order to take advantage of the benefit conferred by the 1954 amendment. At the time the decision was made, certain leases were undoubtedly in their 12th month of the 10th year and lessees who intended to make partial assignments had, under the overruled interpretation, until August 29, 1958 (the last day of the month in which the land offices were open for the transaction of business) within which to file such assignments. As the 11th month of the 10th year of those leases (not later than which, under the decision of August 11, 1958, partial assignments must be filed) had already elapsed, a holding that assignments filed after the date of the decision, but during the month of August, could not become effective would be unsound. This is so because it would, in effect, deprive such parties of a right to which they were entitled under the Associate Solicitor's opinion. In the circumstances, partial assignments of leases in the 12th month of their 10th year in August 1958, filed on or before August 29, 1958, will be recognized.

This leaves for consideration the action taken in the decision of August 11, 1958, with respect to the Hagood lease (Los Angeles 087429). There it was held that the lease terminated on June 30, 1957, that the partial assignment to the Savoy Petroleum Corporation never took effect, and that the offers of Franco Western Oil Company and Raymond J. Hansen should not have been rejected.

Upon further consideration, it must be held that L. N. Hagood and the Savoy Petroleum Corporation are as much entitled to have the assignment honored as are those others whose leases are considered to have been properly extended.

Accordingly, pursuant to the authority delegated to the Solicitor by the Secretary of the Interior (sec. 23, Order No. 2509, as revised; 17 F.R. 6794), that part of the decision of August 11, 1958, which held that the land involved in that case was available for oil and gas leasing on July 1, 1958, when the offers of Franco Western Oil Company and Raymond J. Hansen were filed is vacated and the decision is modified to recognize the propriety of the action taken in extending the Hagood lease. Therefore, those two offers must be and are hereby rejected.

EDMUND T. FRITZ,
Acting Solicitor.

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